Filed 3/20/19 In re A.D. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re A.D., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B291741 (Super. Ct. No. 17JV00320) (Santa Barbara County)
SANTA BARBARA COUNTY CHILD PROTECTIVE SERVICES, Plaintiff and Respondent, v. E.J., Defendant and Appellant.	

E.J., mother of A.D., appeals from a juvenile court order terminating her parental rights and freeing A.D. for adoption. (Welf. & Inst. Code, § 366.26.)[1] Appellant contends that Santa Barbara County Child Protective Services (CWS) failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) and California related statutes (§ 224 et seq.). We conclude that the ICWA-030

[1] All statutory references are to the Welfare and Institutions Code unless otherwise stated.

notice mailed to the Cherokee tribes was inadequate and conditionally reverse for the limited purpose of complying with the notice requirements of ICWA. (*In re Justin S.* (2007) 150 Cal.App.4th 1426, 1437-1438; *In re Francisco W.* (2006) 139 Cal.App.4th 695, 711.)

Facts and Procedural History

In 2017, CWS filed a juvenile dependency petition for failure to protect (§ 300, subd. (b)) after A.D. was born prematurely and mother tested positive for methamphetamine. Mother admitted using methamphetamine six days before A.D.'s birth, was homeless and unemployed, and had an extensive criminal history involving substance abuse. Mother's probation officer told CWS that M.M., a drug user, was A.D.'s father and in the San Luis Obispo County jail.

Father appeared at the jurisdictional hearing and said there was Indian heritage on "[m]y mom's side" and that "[m]y grandma's mother was Indian." She was "Cherokee from Oklahoma, and a very very very small amount by the time it got to me." Father said his immediate family had passed away but provided the name and phone number of his mother's cousin, L.T., who may have more information about Indian heritage. On August 21, 2017, father filed a JV-505 Statement Regarding Parentage stating that he told four relatives (listing names) that "the child is mine." A DNA test later confirmed that father is A.D.'s biological father.

On September 5, 2017, CWS left a voice mail for L.T. at the phone number provided but received no response.[2] The next day, CWS mailed an ICWA-030 notice to the Bureau of

[2] CWS left two voicemails at the same phone number on August 1 and August 8, but received no response.

Indian Affairs (BIA), the Secretary of Interior, the Cherokee Nation, the Eastern Band of Cherokee Indians, and the United Keetoowah Band of Cherokees.

At a combined Six-Month Review and ICWA Review hearing, CWS reported that it received no-Indian-heritage responses and that "[o]ther tribes have had over 60 days to respond." The trial court found that ICWA did not apply and terminated reunification services. On July 19, 2018, it terminated parental rights and freed A.D. for adoption.

ICWA

ICWA imposes a continuing duty on the juvenile court to inquire whether a child in a dependency proceeding is or may be an Indian child. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 5-6; see *In re K.M.* (2009) 172 Cal.App.4th 115 [agency required to make reasonable inquiry but ICWA does not require further inquiry based on mere supposition].) Here the ICWA inquiry was limited to three unanswered voicemails. CWS argues that it was an adequate inquiry, but the ICWA-030 notice mailed to the tribes failed to list family history information that was readily available. Section 224.3, subdivision (a)(5)(C) required the ICWA notice include the names and addresses of the child's biological parents, grandparents, and great grandparents or Indian custodians, including married and former names or aliases, birthdates, places of birth and death, and other identifying information.

Here, the ICWA-030 notice did not say whether father was alive or dead or list his address [he was in jail], his place of birth, or the names of his mother, father or grandparents, and whether they were deceased. It stated that A.D.'s birth certificate was "unavailable" and that it was

"[u]nknown" whether father acknowledged parentage. The ICWA-030 notice further stated there was another alleged father (A.D. Sr.) but that individual was dismissed from the dependency action two weeks after the notice was sent to the tribes. Page 8 of the ICWA-030 notice provided for "[o]ther relative information (*e.g.*, *aunts*, *uncles*, *siblings*, *first and second cousins*, *stepparents*, *etc.*)" and was blank.

CWS argues that it substantially complied with the notice provisions of ICWA and that appellant was not prejudiced. ICWA notice requirements serve the interests of the Indian tribes and may not be waived by a parent. (*In re Justin S.*, *supra*, 150 Cal.App.4th at p. 1435.) "'[[T]]he relevant question is not whether the evidence . . . supports a finding that the minor[] [is an] Indian child[]; it is whether the evidence triggers the notice requirement of ICWA so that the tribes themselves may make that determination.' [Citation.]" (*In re Isaiah W.*, *supra*, 1 Cal.5th at p. 15.) CWS is statutorily required to follow the ICWA inquiry and notice requirements. (See §§ 224.2-224.3; Cal. Rules of Court, rules 5.481 & 5.482; *In re W.B.* (2012) 55 Cal.4th 30, 52-53.) "'[O]ne of the primary purposes of giving notice to the tribe is to enable the tribe to determine whether the child involved in the proceedings is an Indian child. [Citation.]' [Citation.] Notice is meaningless if no information is provided to assist the tribes and the BIA in making this determination. With only the names, birth dates, and birthplaces of the minor[] and the parents, it is little wonder the responses received were that the information was insufficient to make a determination or that the minor[was] not registered or eligible to register." (*In re D.T.* (2003) 113 Cal.App.4th 1449, 1455.)

Disposition

The order terminating parental rights is conditionally reversed and the matter is remanded with directions to file and serve an amended ICWA notice on the Cherokee tribes, the BIA, and the Secretary of Interior. If a tribe does not declare A.D. to be an Indian child or if no timely response is received, the trial court shall reinstate the judgment terminating parental rights. If after proper inquiry and notice, a tribe determines that A.D. is an Indian child as defined by ICWA, the trial court shall proceed in compliance with ICWA and the Welfare and Institutions Code. (*In re Justin S.*, *supra*, 150 Cal.App.4th at pp. 1437-1438; *In re Francisco W.*, *supra*, 139 Cal.App.4th at p. 711.)

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Aida Aslanian, under appointment by the Court of Appeal for Defendant and Appellant.

Michael XC. Ghizzoni, County Counsel, Christopher E. Dawood, Deputy Counsel for Plaintiff and Respondent.